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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,704	02/03/2004	Michael G. Poterek	5516USAD1	1308

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EXAMINER	
SHAPIRO, JEFFERY A	

ART UNIT	PAPER NUMBER
3653	

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/770,704	POTEREK ET AL.	
	Examiner	Art Unit	
	Jeffrey A. Shapiro	3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 June 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *11-54* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *11-21* is/are allowed.

6)☒ Claim(s) *22-54* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 22, 27, 35, 38, 39, 41-45 and 53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "independently determining...", independent sensors...", independently sensing...", etc., is considered to be unclear. It is not clear what such phrases are referring to regarding what the independence is in reference to.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 22-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lhoest (US 5,946,217) in view of Nakagawa (US 6,711,874 B1) and further in view of Neary (US 6,751,524 B2).

Lhoest discloses solution reservoirs (110b), a solution receptacle feeders (110a) in the form of containers (210) in which material is either released from or transferred to the respective container. See col. 6, lines 43-58 of Lhoest. See also col. 1, lines 45-50,

which states that capsules or granules or syrups, etc., are dispensed. Lhoest further discloses that the system is a computer driven installation (10) in which the reservoirs and feeders are all movable relative to each other. In other words, either the feeder can be either stationary or movable, as all containers (210) are movable on a means consisting of roller or chain conveyors, for example, as described at col. 6, lines 59-64. The containers (210) are identifiable to the system by labels or other means such as optical reading and weighing. See col. 11, lines 16-21 and col. 12, lines 10-28. Lhoest also states at this passage that the position of each satellite unit is known and can be determined at any time. Note that roller conveyors are functionally equivalent to a belt conveyor.

Lhoest does not expressly disclose, but Nakagawa discloses use of a weight checker (30 or 300) (construed as a checkweigher) with integrity check circuitry (see figures 9a and 10, for example as well as col. 5, lines 22-31) as part of a pharmaceutical packaging apparatus with conveyor (310). Note also figures 8a, 9a and 10, which discloses integrity check circuitry for use in checking the checkweigher. These flowcharts indicate logic which is part of the check weigher controls (30) and seal checker controls (40). See col. 10, line 30-col. 11, line 67. The logic can be construed as Applicant's integrity checking logic

Lhoest does not expressly disclose, but Neary discloses a system of gap control between successive items for a conveyor system having photoeyes (48(a or a-1) (see figures 2, 3), and which detects position of items relative to the conveyor system. (See abstract and figures 1-10.)

Lhoest, Nakagawa and Neary are considered to be analogous art because they are all concerned about electronic control of industrial systems and article handling. Note also that Lhoest's system dispenses pharmaceutical and detects weight and position of said pharmaceutical throughout the system, Nakagawa's system accepts pharmaceutical from a dispenser, weighs it and performs a quality check after packaging has been done, and Neary discloses position control of items on a belt conveyor with respect to both the conveyor and each other, said conveyor being used to carry finished pharmaceutical packages away to a distribution point.

At the time of the invention, it would have been obvious to use Lhoest's system to feed pharmaceutical to Nakagawa's packaging system with check weighing system.

The suggestion/motivation would have been to package pharmaceutical materials that are handled by Lhoest's system. Also Note that Lhoest's system detects weight of various containers and stations. See Lhoest, col. 12, lines 19-23.

At the time of the invention, it would have been obvious to use the gap control system of Neary's conveyor system in Lhoest's system.

The suggestion/motivation would have been to insure the packages are properly singulated with an adequate gap between them and to carry finished pharmaceutical packages away from a production point to a distribution point. See Neary, col. 1, lines 15-20 and col. 3, lines 36-47.

Therefore, it would have been obvious to combine Lhoest , Nakagawa and Neary in order to obtain the invention as described in Claims 11-54.

Allowable Subject Matter

5. Claims 11-21 are allowed.

6. The following is a statement of reasons for the indication of allowable subject matter. Based on the allowance of the parent case 09/927,845, now US 6,687,638 B1, Applicant's specification and arguments, the prior art does not disclose, teach or suggest a checkweigher having control logic independent of integrity checking logic.

Response to Arguments

7. Applicant's arguments filed 6/15/05 have been fully considered but they are not persuasive. Applicant asserts that Applicant's claim limitation of an "independent checkweigher" overcomes the prior art. However, all the components in Nakagawa and Lhoest can be construed as independent and working individually. These limitations can be construed broadly.

For example, Applicant's Independent Claim 22 reads as follows.

> 22. (Original) A method of checking the integrity of a checkweigher, the method comprising:
> independently sensing a pack on a conveyor line of the checkweigher;
> determining if the pack is skewed based on a length of time that the pack is sensed;
> determining if consecutive packs are too closely spaced to obtain a proper weight based on a length of time between sensing the consecutive packs; and
> providing a message independent of the checkweigher representative of such determinations.

This language does not mention a checkweigher having control logic independent of integrity checking logic. Instead, it only states that the method "independently senses..." and "provides a message independent of the checkweigher..."

Further, the checkweigher of Nakagawa discloses a weightchecker (30 and 300). As can be seen from figure 7, for example, the weight checker control unit (30) and weight detector (305) work independently from the other components, such as seal checker control unit (40) so as to check the weight of a package of pharmaceutical. Note that the weight checker control is independent of the CPU and the seal checker controller.

Regarding a conveyor belt, note that Neary's belts are conveyor belts and are used to carry finished product from a production point to a distribution point. Note also that Lhoest's roller conveyor is considered a functional equivalent of a belt conveyor.

Regarding checkweigher logic, note that Nakagawa discloses weight checker control unit (30), for example, which can be construed as having checkweigher logic. Note also CPU (51), which suggests an electronic, logic based control system.

Regarding the teaching of Neary to singulate packages, note that it would have been obvious singulate packages being produced by Loest's system, because singulation of enmass quantities or randomly spaced or grouped articles allows greater control of the items for further processing, such as packaging into specific groups for palletizing, for example. See col. 1, lines 25-33 of Neary. One ordinarily skilled in the art would recognize that Lhoest's packaged pharmaceuticals might require further

processing, therefore presenting the problem of controlling incoming streams of items. See again, Lhoest, col. 1, lines 46-49, which states that Lhoest's bulk pharmaceuticals are packaged. Therefore, it would have been obvious to use Neary's teaching of singulating packages and maintaining a particular gap size between successive packages while maintaining optimum throughput so as to control further processing of pharmaceutical packages created by Lhoest's system.

Therefore, the rejection of Claims 22-54 is maintained.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (571)272-6943. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald P. Walsh can be reached on (571)272-6944. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jeffrey A. Shapiro
Examiner
Art Unit 3653

September 3, 2005

DONALD [illegible]
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